

**IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ALONZO AUSTIN,
Executor for Ruth H. Lewis, Estate,

Plaintiff,

V.

CASE NO. 3:07-cv-138-MHT

**MODERN WOODMEN
OF AMERICA, et al.,**

Defendants.

MOTION TO DISMISS

Defendant named in Plaintiff's Complaint as "Montgomery City Police Department" respectfully moves this Honorable Court to dismiss with prejudice Plaintiff's claims against it, and assign the following grounds, separately and severally:

1. Defendant named “Montgomery City Police Department” is not a legal entity subject to suit of liability under 42 U.S.C. § 1983. *See Dean v. Barber*, 951 F.2d 1210 1214 (11th Cir. 1992)
2. Pursuant to Rule 12 (b) (6) *Federal Rules of Civil Procedure*, Plaintiff’s Complaint fails to state a claim against Montgomery City Police Department for which relief can be granted. Plaintiff’s Complaint does not specifically allege any claims against Montgomery City Police Department.
3. Plaintiff’s claims are barred by the applicable statute of limitations and statute of non-claims establishing limitations and requirements for the presentation

of claims against municipalities as set forth in *Ala. Code* §§11-47-23 and 11-47-192 (1975).

4. Defendant avers peace officer qualified and/or discretionary function immunity.

Respectfully submitted this the 16th day of March, 2007.

/s/Kimberly O. Fehl
Kimberly O Fehl (FEH001)
Attorney for Defendants

OF COUNSEL:

Legal Department
City of Montgomery
Post Office Box 1111
Montgomery, Alabama 36101-1111
(334) 241-2050
(334) 241-2310 (fax)

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the above and foregoing to the attorneys listed below using the CM/ECF system or by placing a copy of same in the United States Mail, postage prepaid, this 16th day of March, 2007:

Alonzo Austin
1321 Oliver-Carlis Road
Tuskegee, Alabama 36083

Charles D. Stewart
SPAIN & GILLON, L.L.C.
2117 Second Avenue, North
The Zinszer Building
Birmingham, AL 35203

Joe Espy, III
MELTON, ESPY & WILLIAMS, P.C.
Post Office Drawer 5130
Montgomery, Alabama 36103

Victor L. Hayslip
John H. Patterson
Jason R. Bushby
BURR & FORMAN, LLP
4200 North 20th Street, Suite 3100
Birmingham, Alabama 35203

George W. Royer, Jr.
LANIER FORD SHAVER & PAYNE, P.C.
Post Office Box 2087
Huntsville, Alabama 35084

Stanley F. Gray
GRAY LANGFORD SAPP MCGOWAN GRAY & NATHANSON
PO Box 830239
Tuskegee, Alabama 36083-0239

Howard F. Bryan, Circuit Judge
101 East Northside Street
Tuskegee, Alabama 36083

Deborah H. Biggers
113 E. Northside Street
Tuskegee, Alabama 36087

Mason Manor
4120 Carmichael Road
Montgomery, Alabama 36106

Robert Story
802 Crawford Street
Tuskegee, Alabama 36083

City of Tuskegee Police Department
101 Fonville Street
Tuskegee, Alabama 36083

Alabama State Treasurer's Office
P.O. Box 302520
Montgomery, Alabama 36130-2520

Alabama State Board of Licensure
P.O. Box 887
Montgomery, Alabama 36101

Juanita K. Upshaw
P.O. Box 830265
Tuskegee, Alabama 36083

George Clay
1205 Main Street
Tuskegee, Alabama 36083

Aetna Insurance Co.
Tampa Business Center
P.O. Box 30257
Tampa, Florida 33620-3257

/s/ Kimberly O. Fehl
Of Counsel